

STATE OF MICHIGAN
COURT OF APPEALS

DIETRICH FAMILY IRREVOCABLE TRUST,
EDGER J. DIETRICH and THERESITA
DIETRICH,

UNPUBLISHED
April 26, 2005

Plaintiffs-Appellants,

v

WAYNE COUNTY TREASURY FORFEITURE
DEPARTMENT,

No. 251114
Wayne Circuit Court
LC No. 03-318241-CZ

Defendant-Appellee.

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition and dismissing plaintiffs' complaint to set aside a judgment of foreclosure. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). In reviewing a motion brought under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other evidence show there was no genuine issue of material fact. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000). When reviewing a motion decided under MCR 2.116(C)(8), the Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997), *aff'd* 459 Mich 999; 595 NW2d 855 (1999).

Defendant filed a petition for foreclosure of properties owned by plaintiffs and others which had been forfeited for nonpayment of taxes. A judgment was issued in March 2002. Defendant later sold plaintiffs' property to a third party. In June 2003, plaintiffs filed this action to set aside the judgment, claiming they did not receive proper notice of the foreclosure proceedings. The former owner of the forfeited property may contest the county's title only by paying the amount necessary to redeem the property and filing a claim of appeal from the judgment with this Court. MCL 211.78k(6), (7). If the county has sold the property to a third

person, the former owner cannot sue to recover the property from the third person but may only file a claim for damages with the court of claims. MCL 211.78l(1), (2). Because the county's title pursuant to the judgment cannot be challenged except by direct appeal and the property, once sold to a third party, cannot be recovered from that party, plaintiffs' independent action to set aside the judgment and recover the property failed to state a claim upon which relief could be granted. Therefore, the trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ David H. Sawyer

/s/ Kurtis T. Wilder